

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* E. JOHNSON, Minor.

UNPUBLISHED

June 11, 2020

No. 350946

Allegan Circuit Court

Family Division

LC No. 18-059827-NA

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Before: CAMERON, P.J., and BOONSTRA and LETICA, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court’s order terminating her parental rights to her minor child, EJ, under MCL 712A.19b(3)(c)(i) (adjudication issues continue to exist), (c)(ii) (other issues exist that will not likely be rectified), and (g) (failure to provide proper care and custody). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On June 27, 2018, petitioner Department of Health and Human Services (DHHS) filed a petition for EJ’s removal after methamphetamines were found in her father’s<sup>1</sup> home. DHHS alleged in part that respondent’s whereabouts had been unknown since May 2017, and that she had not contacted EJ for several months. The petition also alleged that respondent was unable to provide proper care for EJ due to neglect, cruelty, drunkenness, criminality, or depravity, that she had exposed EJ to domestic violence in October 2013, and that she had also exposed her to methamphetamine, amphetamines, and marijuana in May of 2017. The petition noted that respondent’s criminal history included a July 2017 felony involving methamphetamine and an April 2018 misdemeanor related to “dangerous drugs.” The petition further alleged that since May 2017, Children’s Protective Services (CPS) had conducted two investigations during which it had not been able to locate respondent.

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<sup>1</sup> EJ’s father’s rights were not terminated in the proceedings below, and he is not a party to this appeal.

EJ was placed with paternal relatives. Respondent did not appear for the initial preliminary hearings. On September 12, 2018, respondent appeared at a hearing and entered a plea of admission to the allegation in the petition that she “has a substance abuse issue involving methamphetamine which negatively impacts her ability to parent and the family is in need of services.” Respondent told the trial court that she would be entering an inpatient drug program and would be able to appear at further hearings by phone. The trial court assumed jurisdiction over EJ with respect to respondent. Respondent failed to appear at the next two hearings and did not appear by phone. At an October 8, 2018 hearing, a foster care specialist informed the court that respondent had been briefly incarcerated and released to a jail diversion program from which she then absconded. There were warrants out for her arrest and her whereabouts were unknown. Respondent appeared again in court on January 22, 2019, after being released from jail on December 17, 2018. She had been referred to individual counseling and had started visitation with EJ, which the caseworker found to be appropriate. At a review hearing on March 26, 2019, respondent’s caseworker testified that respondent had tested negative on three consecutive drug screens and had been granted unsupervised visitation; however, on March 19, respondent tested positive for methamphetamine and was placed back on supervised visitation. Respondent had attended one counseling session, but had expressed that she wanted to switch to a different counselor. The caseworker told respondent that she would have to arrange an appointment with the new counselor and provide documentation that she had done so; respondent had not done this. Respondent gave birth to another child in a different county in early March, and that child had tested positive for THC, the active ingredient in marijuana, at birth. However, after successive negative tests, the infant was released with a safety plan.

At a dispositional review hearing on June 17, 2019, respondent’s caseworker testified that respondent’s last contact with petitioner was a drug screen on April 3, 2019, in which she tested positive for THC. Respondent had not seen EJ since March 2019, and the caseworker had been informed that respondent had left the state with her newborn infant sometime after the April drug screen. In July 2019, petitioner filed a supplemental petition to terminate respondent’s rights to EJ. Respondent had still not been located when the termination hearing was held on September 19, 2019, although she was represented by counsel.

After the termination hearing, the trial court held that the statutory grounds for termination found in MCL 712A.19b(3)(c)(i) and (ii) and MCL 712A.19b(3)(g) had been proven by clear and convincing evidence, stating:

Based on th[e] testimony, the Court would find clear and convincing evidence that the conditions that led to the adjudication continue to exist and that there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering [EJ’s] age. Other conditions exist that cause the child to come within the Court’s jurisdiction and the parent has received recommendations to rectify those conditions. The conditions have not been rectified by [respondent], and she received appropriate notice of this hearing and was given a reasonable opportunity to rectify those conditions. There is no reasonable likelihood, based on the evidence presented to the Court, that those conditions will be rectified within a reasonable time considering [EJ’s] age.

The court would also find that [respondent] failed to provide proper care or custody for her child and there is no reasonable expectation that she will be able to provide proper care and custody within a reasonable time considering [EJ's] age.

So, the Court would find that there is clear and convincing evidence and a statutory basis for the termination of [respondent]'s rights to her daughter, [EJ].

The trial court also found that termination of respondent's parental rights was in EJ's best interests:

The Court has to look at the best interests of [EJ] as well. Again, with respect to her age, she is seven-years-old, there is a need for stability and permanency, especially at the age of seven, and the fact that [respondent], I guess, you know, was engaging in parenting time, was engaging in services, but has failed to continue with those services, has left that parenting time on hold. [EJ] has not, reportedly, seen her mother since she fled for Arkansas. I think that that fact, even if there was a good bond at the time of parenting and they were somewhat well bonded before, the fleeing has a great, negative impact on the bond between [respondent] and her daughter. And so, based on the parent-child bond, and based on [EJ's] age and need for stability and permanency, the Court would find that those two factors greatly weigh in favor of [EJ's] best interests, that they are in [EJ's] best interests.

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[EJ] is living with relatives, however, that one factor, even if it does weigh against termination, which it does here, would not out-weigh the factors that favor termination and it would be in [EJ's] best interests for termination to occur.

This appeal followed.

## II. STATUTORY GROUND FOR TERMINATION

Respondent argues that the trial court clearly erred by finding that there was clear and convincing evidence to terminate her parental rights. We disagree.

We review for clear error a trial court's holding that the petitioner has established the existence of at least one statutory ground for termination by clear and convincing evidence MCL 712A.19b(3); MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000); *In re Moss*, 301 Mich App 76, 88; 836 NW2d 182 (2013). The trial court terminated respondent's parental rights to EJ under MCL 712A.19b(3)(c)(i) and (ii), and (g), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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(g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

The trial court did not clearly err by holding that the conditions that led to respondent's adjudication continued to exist and that there was no reasonable likelihood that they would be rectified in a reasonable time, considering EJ's age. Respondent admitted in her plea that she had a substance abuse issue involving methamphetamine that negatively impacted her ability to parent, and that she needed services. At the termination hearing, over a year later, respondent had made no effort to deal with her substance abuse issues. She had absconded from a jail diversion program, had not participated in counseling for substance abuse, had tested positive for methamphetamine in March of 2019, and had then left the state with her newborn infant. Her whereabouts at the time were unknown. The trial court did not clearly err by determining that respondent's issues with substance abuse, which caused her to be unable to parent EJ, continued to exist. Moreover, given respondent's prior contacts with CPS, her failure to make any substantial progress on her treatment plan, and her disappearance after the April 2019 drug screen, we conclude that the trial court did not clearly err by finding that there was clear and convincing evidence that there was no reasonable likelihood that those conditions would be rectified within a reasonable time considering EJ's age. MCL 712A.19b(3)(c)(i); see also *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) (stating that "this statutory ground exists when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services") (quotation marks, footnote and citation omitted).

Because we find that the trial court did not clearly err by holding that the statutory ground in MCL 712A.19b(3)(c)(i) was proven by clear and convincing evidence, we decline to address whether there was also a valid basis for termination of parental rights under MCL 712A.19b(3)(c)(ii) and (g); *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

### III. BEST-INTEREST DETERMINATION

Respondent also argues that the trial court clearly erred by determining that termination of respondent's parental rights was in EJ's best interests. We disagree.

We review for clear error a trial court's holding that termination of parental rights is in the best interests of the child. *In re Laster*, 303 Mich App 485, 496; 845 NW2d 540 (2013). The trial court's decision must be supported by a preponderance of the evidence. *In re Moss*, 301 Mich App at 88-90. In deciding whether termination is in the child's best interests, the court may consider the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), the child's bond to the parent, *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); the child's safety and well-being, *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011), whether the parent can provide a permanent, safe, and stable home, *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012); and the child's "need for permanency, stability, and finality," *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992). Also, in *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012), this Court held:

[T]he fact that the children are in the care of a relative at the time of the termination hearing is an "explicit factor to consider in determining whether termination was in the children's best interests." A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal. [Citations omitted.]

Respondent argues that the trial court failed to take into account her "history of appropriate care" for EJ. We find little evidence in the record of any such history. Prior to EJ's removal from her father's care, respondent had not seen her for over a year. This case was three months old before respondent first appeared in court. Although respondent had some appropriate visitations with EJ in January and February 2019, respondent again used methamphetamine in March 2019 and then left the state. The trial court did not err by failing to credit less than three months of appropriate visitation with EJ over the factors that weighed in favor of termination.

Further, although the record does show that EJ possessed a bond with respondent, the record also shows that EJ was negatively affected by respondent's sporadic appearances in her life. The caseworker testified that EJ looked forward to visits with respondent when they occurred, and was "very disappointed" when respondent left Michigan. The caseworker testified that, during periods when respondent was not available for visitation (either due to incarceration or an inability to locate her), EJ consistently asked where her mother was and why she did not come see her. The trial court did not err by concluding that EJ's need for permanency and stability outweighed whatever bond existed. *Gillespie*, 197 Mich App at 446-447.

Finally, we disagree with respondent's argument that EJ's placement with relatives was a dispositive factor. Prior to EJ's removal, her placement with her father was not a "relative placement" under the relevant statute, and the trial court did not need to consider it as such. See MCL 712A.12a(1)(j); *In re Schadler*, 315 Mich App 406, 413; 890 NW2d 676 (2016). Further, although EJ was placed with her paternal first cousins once removed during the proceedings below, the trial court appropriately considered this placement but found that it did not outweigh other

factors supporting the conclusion that termination of respondent's parental rights would be in the EJ's best interests. *Olive/Metts*, 297 Mich App at 43. The trial court considered the child's age, her need for stability and permanency, and the fact that respondent's fleeing had a "great, negative impact on the bond." *Id.* The court did not clearly err in finding by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests. *Laster*, 303 Mich App at 496.

Affirmed.

/s/ Thomas C. Cameron

/s/ Mark T. Boonstra

/s/ Anica Letica